have made a valid election: see *Huckle* v. *The London County Council.*[3]

As Lord Greene M.R. said in *Olson* v. *Magnesium Castings & Products Ltd.*,[4] at page 333:

"The point made here is that we ought to hold on the evidence that the workman had accepted payment under the Workmen's Compensation Act, 1925, knowing that he had, or might have, a common law right, and that, in view of that knowledge, the receipt of those payments operated as an exercise by him of the option which the sub-section gives him in accordance with the opinions of the majority of the House of Lords in *Young* v. *Bristol Aeroplane Co. Ltd.*[5] I can find no evidence which would justify the conclusion that the workman, when he received those payments, knew of the existence of his common law right."

In the instant case I am satisfied that the widow was unaware of her common law right.

On other grounds too the defence must fail for reasons which I shall state briefly. First, under section 27 of the Workmen's Compensation Ordinance, what the labour officer had to do was to hold an inquiry purely for the purposes of settling by agreement any matters in difference between the workmen (or his dependants) and the employer. The Assistant Commissioner for Labour in this case failed to record the agreement as required by section 28 of the Ordinance, so that in effect there is no agreement on the record for any payment of compensation.

Secondly, even had he done so, the agreement was not legally binding on the widow who was then still an infant. The deceased's father, too, had no *locus standi* as the grant of letters of administration had not yet been issued to him. In any event, such an agreement on behalf of the minor beneficiaries of a deceased person's estate require the approval of the court in order to be binding on them: see R.S.C. O. 22 r. 14 and *Narayaniamma* v. *Mohamed Din.*[6]

Thirdly, the law applicable to the facts of a case like the present one is clearly stated in the following passage in 15 *Halsbury* (3rd Ed.) at p. 173:

"The mere fact, however, of a man with two alternative remedies having in ignorance of his rights pursued one and received a payment thereby, will not prevent him from afterwards pursuing the other, if he is able and willing to restore what he has received so as to prevent any wrong being done to any person by his change of remedy."

For the above reasons I would give judgment in favour of the plaintiff.

As to the quantum of damages, I assess the special damages, which were not seriously disputed, at $800 for funeral expenses. As to loss suffered by the deceased's dependants by reason of his death, the deceased was a comparatively young man, 25 years old when he died. His widow was then just under 20 years old and his son was an infant of 2 years. The deceased's earnings were $120 p.m. with board supplied by his employer. Although the evidence is somewhat vague as to facts and figures, his wife and son were totally dependant on him and she received in addition $25 to $35 per month as pocket money. Taking all relevant circumstances into consideration I think a sum of $10,000 would be fair and reasonable compensation for the loss suffered by these two dependants. I would apportion this sum between the widow and son equally. Costs of this action to the plaintiff.

Order accordingly.

Solicitors: *Kam Woon Wah & Co.*; *Lovelace & Hastings.*

PENINSULAR & ORIENTAL STEAM NAVIGATION CO. LTD. & ORS. v. RAMBLER CYCLE CO. LTD.

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Wylie C.J. (Borneo)) August 17, 1964]

[Singapore — Federal Court Civil Appeal No. 37 of 1963]

Contract — Limitation — Bills of Lading — Liability arising after discharge of goods from ship — Applicability of art. III, r. 6 of the Rules set out in Schedule to Carriage of Goods by Sea Act, 1924 — "Loss or Damage".

Carriage of goods by sea — Application of art. III r. 6 of Hague Rules — Whether applies to goods before or after discharge — Hague Rules art. II — "Loss" in relation to discharge of goods — "Discharge" and "delivery".

In September 1953, the Rambler Cycle Company Limited consigned a large quantity of bicycles and bicycle parts to persons in Singapore trading under the name of Southern Trading Company. The goods were shipped on the s.s. *Chusan* of which the owners are the Peninsular and Oriental Steam Navigation Company Limited from London to Singapore on five bills of lading dated September 25, 1953. Each of these showed the shipper as the Rambler Cycle Company and the goods were consigned to "order". The bills of lading contained the usual clause paramount making them subject to the provisions of the Carriage of Goods by Sea Act, 1924. The ship arrived at Singapore on October 25, 1953 and on October 27, the goods were discharged from the ship and were placed in storage in the godowns of the Singapore Harbour Board. The same day the shipping company's agents, Messrs. Islay Kerr, gave the Southern Trading Company an order on the Singapore Harbour Board for the delivery of the goods. The Southern Trading Company were not in possession of the bills of lading but they furnished a letter of indemnity by the Sze Hai Tong Bank Limited. The same day the Singapore Harbour Board delivered the goods to the Southern Trading Company against Messrs. Islay Kerr's delivery order. Eighteen months later, that is on April 27, 1955, the Bank of China Limited sent to Messrs. Islay Kerr a notice stating that they held the bills of lading and claiming that "the goods were hypothecated to them". The Rambler Cycle Company not having recovered the goods or been paid any part of their price commenced proceedings against the shipping company for damages for breach of contract and/or duty in and about the carriage of goods by sea and the delivery thereof and/or for damages for the loss and/or conversion and/or non-delivery of such goods. The shipping company joined the Sze Hai Tong Bank Limited and the Southern Trading Company as third parties to the proceedings and

ultimately all parties concurred in stating a special case for the opinion of the High Court. The special case referred to the facts and to article III, rule 6 of the Rules set out in the Schedule to the Carriage of Goods by Sea Act, 1924 which reads "In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered." The question was whether this provision was applicable in the present case and whether therefore the claim was barred. Tan Ah Tah J. (as he then was) held that it did not apply and therefore the shipping company and the Sze Hai Tong Bank were liable. The shipping company and the Sze Hai Tong Bank Limited, thereupon appealed against this decision.

Held: (1) the shipowner's liability under a contract evidenced by a bill of lading in respect of shipments from a United Kingdom port is only subject to the provisions of the Hague Rules (that is the rules set out in the Schedule to the Carriage of Goods by Sea Act) from the time when the goods were loaded on the ship to the time when they were discharged from the ship;

(2) as in this case the liability of the shipping company arose after the discharge of the goods, article III rule 6 of the Rules set out in the Schedule to the Carriage of Goods by Sea Act, 1924, did not apply and therefore the period of limitation applicable was the ordinary period of limitation of six years.

Per Wee Chong Jin C.J. (Singapore): "This was a simple and clear case where the 'loss' arose in relation to the delivery of such goods. Can it be plausibly suggested that though the loss was due to the goods being delivered by the carrier to a party other than the shipper after the goods had been discharged from the ship and had been placed in storage in a godown and the next duty of the carrier under the bill of lading was to deliver the goods to the shipper, it was nonetheless a loss which arose 'in relation to the discharge of such goods' within the meaning of article II and therefore a 'loss' within the meaning of article III rule 6 paragraph 3? I think not. The operation of discharge is different from the operation of delivery. If the intention and object of the Hague Rules were to also provide for the responsibilities and liabilities, rights and immunities of a carrier in relation to the delivery of goods under a contract of carriage of goods by sea to which the Hague Rules apply nothing would have been simpler than to insert the word 'delivery' after 'discharge' in article II."

Cases referred to:—

(1) *Sze Hai Tong Bank Ltd.* v. *Rambler Cycle Company Ltd.* [1959] M.L.J. 200, P.C.

(2) *Karsales (Harrow) Ltd.* v. *Willis* [1956] 1 W.L.R. 936.

(3) *Golodetz* v. *Kersten Hunick & Co.* (1926) 24 Ll.L.R. 374.

(4) *Vita Foods Products Incorporated* v. *Unus Shipping Co. Ltd.* [1939] A.C. 277.

(5) *Gosse Millard* v. *Canadian Government Merchant Maine Ltd.* [1927] 2 K.B. 432, 434.

(6) *Stag Line Ltd.* v. *Foscolo Mango & Co. Ltd.* [1932] A.C. 328.

(7) *Compania Columbiana de Seguros* v. *Pacific Steam Navigation Co.* [1964] All E.R. 216, 232.

(8) *Gonlandris Brothers Ltd.* v. *Goldman & Sons Ltd.* [1958] 1 Q.B. 74.

(9) *Renton & Co. Ltd.* v. *Palmyra Trading Corporation of Panama* [1957] A.C. 149, 174.

(10) *Pyrene Co. Ltd.* v. *Scindia Navigation Co. Ltd.* [1954] 2 Q.B. 402, 415.

(11) *Anglo-Saxon Petroleum Co.* v. *Adamastos Shipping Co. Ltd.* [1957] 2 Q.B. 233, Aff. [1959] A.C. 133.

(12) *Goodwin, Ferreira & Co. Ltd.* v. *Lampart & Holt Ltd.* [1929] All E.R. Rep. 623, 625.

(13) *Hirot* v. *Bott* (1874) L.R. 9 Ex. 86.

FEDERAL COURT.

A. P. Godwin for the first appellants.

T. H. A. Potts for the second appellants.

M. Karthigesu for the respondents.

Cur. Adv. Vult.

Thomson L.P.: This appeal raises a question which is said not to have been decided previously regarding certain provisions of the United Kingdom Carriage of Goods by Sea Act, 1924.

The facts, as they have been agreed by all parties, are, except in one crucial particular to be mentioned later, very similar to those in the case of *Sze Hai Tong Bank Ltd.* v. *Rambler Cycle Co. Ltd.*[1] (the *"Glen Line"* case).

In September, 1953, the Rambler Cycle Company consigned a large quantity of bicycles and bicycle parts to persons in Singapore trading under the name of Southern Trading Company. The goods were shipped on the s.s. "Chusan", of which the owners are the Peninsular and Oriental Steam Navigation Company Limited, from London to Singapore on five bills of lading each dated 25th September, 1953. Each of these showed the shipper as the Rambler Cycle Company and the goods were consigned to "order". The bills of lading contained the usual clause paramount making them subject to the provisions of the Carriage of Goods by Sea Act, 1924.

The ship arrived at Singapore on 25th October, 1953, and on 27th October the goods were discharged from the ship and were placed in storage in the godowns of the Singapore Harbour Board. The same day the shipping company's agents, Messrs Islay Kerr, gave the Southern Trading Company an order on the Singapore Harbour Board for the delivery of the goods. The Southern Trading Company were not in possession of the bills of lading but they furnished a letter of indemnity by the Sze Hai Tong Bank Limited (which at that time was known as the Sze Hai Tong Banking and Insurance Company Limited). The same day the Singapore Harbour Board delivered the goods to the Southern Trading Company against Messrs Islay Kerr's delivery order.

Nothing, it would appear, was seen or heard of the bills of lading until 27th April, 1955, that is some eighteen months after the delivery of the goods to the Southern Trading Company, when the Bank of China Limited sent to Messrs Islay Kerr a notice that the goods were hypothecated to them (the actual state of affairs was that this

Bank were collecting agents of the Rambler Cycle Company). It then came to the notice of Messrs Islay Kerr for the first time that the Bank of China held the bills of lading.

The Rambler Cycle Company have never at any time recovered the goods or been paid any part of their price and they accordingly commenced proceedings against the shipping company on 29th August, 1955. Their claim, as endorsed on the writ, was for damages for breach of contract and/or duty in, and about, the carriage of goods by sea, and the delivery thereof and/or for damages for the loss and/or conversion and/or non-delivery of such goods. The shipping company joined the Sze Hai Tong Bank Limited and the Southern Trading Company as third parties to the proceedings and ultimately all parties concurred in stating a special case for the opinion of the High Court in Singapore.

That case related the facts as they have been stated here. It then referred to the following portion of article III rule 6 of the Rules set out in the Schedule to the Carriage of Goods by Sea Act, 1924:—

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered."

It was then admitted that if that provision was applicable in the present case the suit must be dismissed but that:

"unless the defendants and the ship are discharged from all liability by virtue of the said provisions of the said article the plaintiffs are entitled to recover judgment against the defendants for the value of the said goods the subject of the said 5 bills of lading, the defendants are entitled to be indemnified against the said judgment by both the said third parties hereto, and the first third party is entitled to be indemnified by the second third party against any sums which the first third party may pay to the defendants in consequence of the said indemnity above referred to."

The matter came on for trial before Tan Ah Tah J. who in the event reached the conclusion that the defendants, that is the shipping company, were not entitled to rely on the portion in question of article III rule 6. Judgment was accordingly entered for the plaintiffs against the defendants for $154,404, that the defendants be indemnified in the same sum by both the third parties and that the first third party, that is the Sze Hai Tong Bank Limited, be indemnified by the second party, that is the Southern Trading Company, in respect of any sums paid by the bank to the defendants.

Against that judgment the shipping company and the Sze Hai Tong Bank Limited have now appealed. The Southern Trading Company would appear to take no further interest in the matter.

Tan Ah Tah J. took the view that by reason of the clause paramount the rules contained in the Schedule to the Carriage of Goods by Sea Act, 1924, were to be regarded "as having been contractually incorporated" in the bills of lading, that the third paragraph of article III rule 6 which provides that a carrier shall be discharged from liability in respect of loss or damage unless the suit is brought within a year when so incorporated was an "exception clause", and that in delivering the goods to a party whom they knew not to be the holder of the bills of lading the shipping company had committed a fundamental breach of the contract of carriage, and that in the circumstances they were not entitled to the protection of any exception clause. In support of these views he relied largely on the cases of *Sze Hai Tong Bank Ltd.* v. *Rambler Cycle Co. Ltd., supra,* and *Karsales (Harrow) Ltd.* v. *Wallis.*[2]

With great respect, I am unable to go very far with his Lordship along this particular course of reasoning. I do not think that the general law of contract can be prayed in aid to add to or detract from the provisions of a statute. And here it is to be observed that the particular exception clause which was relied on unsuccessfully in the *Glen Line* case was a purely contractual provision inserted by the parties thereto in the bills of lading and had no basis in the 1924 Act or any other statute, whereas in the present case the bills of lading were required by the 1924 Act to be subject to the paramount clause irrespective of the volition of the parties (see *Golodetz* v. *Kersten, Hunik & Co.*[3]; *Vita Food Products, Incorporated* v. *Unus Shipping Co. Ltd.*[4]).

The most satisfactory answer to the problem in the present case is probably to be found, as in most problems of statutory interpretation, by a consideration of the statute itself.

The Carriage of Goods by Sea Act, 1924, was intended to give statutory effect in England to the "Hague Rules" which were set out in a draft convention recommended by the International Conference on Maritime Law held at Brussels in October, 1922, and as was said by Wright J. in the case of *Gosse Millard* v. *Canadian Government Merchant Marine, Ltd.*:—[5]

"These Rules, which now have statutory force, have radically changed the legal status of sea carriers under bills of lading. According to the previous law, shipowners were generally common carriers, or were liable to the obligations of common carriers, but they were entitled to the utmost freedom to restrict and limit their liabilities, which they did by elaborate and mostly illegible exceptions and conditions. Under the Act and the Rules, which cannot be varied in favour of the carrier by any bill of lading, their liabilities are precisely determined, and so also are their rights and immunities."

As regards the interpretation of the Act I would, before proceeding further quote two passages from what was said in the House of Lords in the case of *Stag Line Ltd.* v. *Foscolo, Mango & Co. Ltd.*[6] One is from the speech of Lord Atkin and is as follows (at p. 342):—

"It will be remembered that the Act only applies to contracts of carriage of goods outwards from ports of the United Kingdom: and the rules will often have to be interpreted in the courts of the foreign consignees. For the purpose of uniformity it is, therefore, important that the courts should apply themselves to the consideration only of the words used without any predilection for the former law, always preserving the right to say that words used in the English language which have already in the particular context received judicial interpretation may be presumed to be used in the sense already judicially imputed to them."

The other passage is from the speech of Lord Macmillan (at p. 350):—

"It is important to remember that the Act of 1924 was the outcome of an International Conference and that the rules in the Schedule have an international currency. As these rules must come under the consideration of foreign courts it is desirable in the interests of uniformity that their interpretation should not be rigidly controlled by domestic precedents of antecedent date, but rather that the language of the rules should be construed on broad principles of general acceptation."

Turning now to the Act itself, the preamble refers to the convention which is set out in the Schedule and states that it is expedient that the rules contained in it "should, subject to the provisions of this Act, be given the force of law with a view to establishing the responsibilities, liabilities, rights and immunities attaching to carriers under bills of lading:".

Section 1 provides that the Rules shall have effect "in relation to and in connection with the carriage of goods by sea" in ships carrying goods from British ports.

Section 3 provides that every bill of lading issued in Great Britain which contains or is evidence of any contract to which the rules apply shall contain an express statement that it is to have effect subject to the provisions of the said rules as applied by the Act.

Coming to the schedule, this is divided into nine articles.

Article I contains the meanings assigned to various expressions. Of these two call for notice here. The first relates to "contract of carriage" and the material portions of it read as follows:—

"'contract of carriage' applies only to contracts of carriage covered by a bill of lading....in so far as such document relates to the carriage of goods by sea."

The other relates to "carriage of goods" and is as follows:—

"'carriage of goods' covers the period from the time when the goods are loaded on to the time when they are discharged from the ship."

Article III, which is divided into eight paragraphs, is headed "Responsibilities and Liabilities".

Paragraph 1 sets out the liabilities of the carrier as to providing a seaworthy ship and so forth before and at the beginning of the voyage.

Paragraph 2 reads as follows:—

"Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried."

Article IV and paragraphs 3, 4 and 5 of article III are irrelevant here. Then comes paragraph 6 of article III which is crucial in the present case and which must be quoted in full.

"Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods."

At this stage I would observe *in limine*, though little really turns on this, that the provision here to the effect that in any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year is clearly a limitation provision. As was said by Roskill J. in the case of *Compania Colombiana de Seguros* v. *Pacific Steam Navigation Co.*[7] the paragraph

"occurs in a rule the whole purpose of which, whether or not the earlier part is of any legal effect, is protection from being subjected to claims for loss of or damage to cargo which have not been promptly made and promptly pursued."

And in the case of *Goulandris Brothers Ltd.* v. *Goldman & Sons Ltd.*[8] Pearson J. expressed the view (at p. 104) that the paragraph "brings about only a discharge of liabilities and not a barring of defences".

To proceed, it seems clear as a matter of construction that paragraph 6 can only refer to claims in respect of loss or damage arising by reason of the provisions of article III and that article III in its turn can only have application within the ambit of the Act as a whole. The real question here is as to the extent of that ambit and so to what liabilities the limitation contained in article III applies, or at any rate whether it

applies to the liability which has been incurred by the present appellants.

Paragraph 6 of article III deals with claims in respect of loss of or damage to goods and commences by providing that notice of such loss or damage must be given within a period of three days. Then it says that "in any event", by which is clearly meant whether or not such notice has been given, the carrier and the ship are "discharged from all liability in respect of damage" unless proceedings are commenced within a year.

The conclusion seems inescapable that the "loss or damage" which is referred to must be loss or damage resulting from failure by a carrier to discharge the responsibilities and liabilities set out in article III and this in its turn is to be read in the context of the Act as a whole. As was said by Lord Somervell of Harrow in the case of *Renton & Co. Ltd.* v. *Palmyra Trading Corporation of Panama*:—[9]

"The general ambit of the Hague Rules is to be found in article III, rule 2,.... It is, in my opinion, directed and only directed to the manner in which the obligations undertaken are to be carried out."

These responsibilities are (paragraph 2) to "properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried".

The Act as a whole only applies (section 1) "in relation to and in connection with the carriage of goods by sea" and by article I(e) carriage of goods "covers the period from the time when the goods are loaded on to the time when they are discharged from the ship".

Approached purely as a matter of construction all this leads to the conclusion that the Act has no relation to anything that happens to goods after they are discharged from the ship in which they have been carried.

That conclusion would seem to be supported by authority.

In the *Stag Line* case, *supra*, it was observed by Lord Atkin (at p. 340) that "the general principles of English law are still applicable to the carriage of goods by sea except as modified by the Act" and again (at p. 342) the Act "is not intended to codify the English law but....to unify certain rules relating to bills of lading".

It is well settled that a bill of lading is not in itself a contract but is evidence of a contract which has already been made between the parties. And that contract though *ex hypothesi* it must contain terms relating to the carriage by sea of the goods concerned may well contain terms relating to other matters. The point, however, that the Act only applies (article I(b)) to the contract in so far as it relates to the carriage of goods by sea was thus put by Devlin J. in the case of *Pyrene Co. Ltd.* v. *Scindia Navigation Co. Ltd.*[10] when he said the rights and liabilities under the rules

"attach to a contract or part of a contract. I say 'part of a contract' because a single contract may cover both inland and sea transport; and in that case the only part of it that falls within the rules is that which, to use the words in the definition of 'contract of carriage' in article I(b), 'relates to the carriage of goods by sea'."

For myself I can see no reason on principle for distinguishing between part of a contract relating to inland transport of goods and another part of the same contract providing for delivery of the same goods to the holder of a bill of lading relating to them, a provision relating to the carrier's liability as a bailee.

Again as regards the scope of the Act, Devlin J. said in relation to the corresponding provisions contained in the United States Carriage of Goods by Sea Act, 1936, in the case of *Anglo-Saxon Petroleum Co.* v. *Adamastos Shipping Co.* (at p. 251) :—[11]

"the Act is concerned [see section 1(e)] with the period beginning with the loading and ending with the discharging of the goods."

In the present case we are not concerned with the beginning of that period, though it is clear from the decision of Devlin J. in the *Pyrene* case, *supra*, that it is a point of time connected in some way with the physical emplacing of the goods in the ship. What we are concerned with is the end of the period and here I would, with respect, adopt the words of Wright J. in the case of *Gosse Millard* v. *Canadian Government Merchant Marine, Ltd., supra*, where he said with reference to the word "discharge" as it occurs in paragraph 2 of article III which is the article which sets out the shipper's liability (at p. 434) :—

"The word 'discharge' is used, I think, in place of the word 'deliver', because the period of responsibility to which the Act and rules apply [art. I(e)] ends when they are discharged from the ship."

The same view was taken by Roche J. in the case of *Goodwin, Ferreira & Co. Ltd.* v. *Lamport & Holt Ltd.*[12] That was a case where goods were damaged while other goods were being lowered into a lighter in which they were and his Lordship said this:—

"The contention of the defendants with regard to the lighterage is that lighterage was not merely permissible and proper, but that when the goods in question — the yarn — were put into the lighter, the sea transit was over, and, therefore, the whole transit was over which was made the subject of the Carriage of Goods by Sea Act, 1924, so that the defendants were not bound at that stage by the provisions of that Act, and, even if there was negligence by their servants, the risks of perils of the sea were all provided for at that stage, and in respect of that stage, by the provisions of the bill of lading unaffected by and not rendered more onerous by the provisions of the Carriage of Goods by Sea Act, 1924. I think it would follow, if the contention that the Act did not apply were well founded, that the exceptions of

the bill of lading itself would be sufficient to protect the defendants upon any view of the facts of this case. But, in my judgment, the contention itself is erroneous. The discharge of these goods was part of the operations which are covered and affected by the Carriage of Goods by Sea Act, 1924. In my judgment, the discharge of these goods was not finished when they were put into a lighter when other goods were being discharged into the same lighter to make up the load which was to start for the shore. When it is contemplated that these goods are to form the lighter load with other goods, the discharge of the goods themselves within the meaning of art. I(e) and art. II in the schedule to the Act of 1924 is, in my judgment, going on so long as other goods are being raised into the lighter and stowed in the lighter alongside or on top of them."

In other words, generally speaking, the line is drawn between the land and the sea. "And God called the dry land Earth; and the gathering together of the waters called he Seas:" (*Genesis* I.10).

From what has been said it seems clearly to follow that a shipper's liability under a contract evidenced by a bill of lading in respect of shipments from a United Kingdom port is only subject to the provisions of the Hague Rules, and here I quote the words of article I(e), "from the time when the goods are loaded on to the time when they are discharged from the ship". His contract may as a matter of general law extend, as in the case of a through bill of lading, before and after that period, but in so far as it involves liabilities before and after the period it is subject to the general law of the land and is not in any way subject to the provisions of the Hague Rules. In the circumstances where, as here, we have a limitation provision occurring in the body of the rules it can only be held to apply to a portion of the contract, notionally physical or temporal, which is subject to the rules and can have no application outside its ambit. Outside the ambit of the rules the liability is governed by the general law of contract and the period of limitation is the general period of limitation.

In the present case the liability of the shipping company which it is sought to enforce, whether it be in contract or whether it be in tort, arose after the discharge of the goods, that is to say after the expiration of the period during which the Hague Rules applied, and in the circumstances the period of limitation applicable is the ordinary period of limitation of six years.

For the foregoing reasons I would dismiss the appeal.

Wee Chong Jin C.J. (Singapore): This appeal arises out of an action by the plaintiffs respondents against the defendants/appellants for damages for breach of contract and/or duty in and about the carriage by sea from London to Singapore of goods shipped by the plaintiffs on the defendants' vessels and/or conversion. Before the action came on for trial the first third party/appellants and the second third party were joined as third parties and all the parties to that action concurred in stating a special case for the opinion of the trial court upon certain agreed facts which I will briefly set out.

In September 1953 the plaintiffs shipped on the s.s. "Chusan" certain goods under a bill of lading dated 25th September 1953 whereby the defendants acknowledged the shipment and agreed to deliver the goods at Singapore unto order.

The goods arrived in Singapore on 25th October 1953. It is agreed that the plaintiffs are to be regarded as being at all material times the owners of the goods and the persons entitled to its delivery by the defendants under the said bill of lading.

The goods were discharged by the defendants at Singapore on 27th October 1953 and were then placed in storage in one of the godowns of the Singapore Harbour Board. The same day the Singapore Harbour Board handed over the goods to the second third party on production of a delivery order in favour of the second third party signed by or on behalf of the defendants by their agents, Islay Kerr & Co. Ltd., who had issued this delivery order to the second third party at the request of the second third party against a letter of guarantee signed by or on behalf of the second third party and endorsed by or on behalf of the first third party.

The bill of lading was never presented to the defendants' agents and it is conceded that the defendants issued the said delivery order to the second third party without the knowledge and consent of the plaintiffs and without the production of the said bill of lading relating to the said goods.

The goods having been so delivered to the second third party have never subsequently come into the possession of the plaintiffs nor have the plaintiffs recovered any part of the value of the said goods.

Other goods under four similar bills of lading were similarly shipped by the plaintiffs on vessels belonging to the defendants from London to Singapore and which goods were handed over to the second third party under circumstances and dates which were in all material respects similar to the circumstances and dates hereinbefore set out.

All these contracts of carriage were governed by English law and were subject to all the terms, provisions and conditions of the Carriage of Goods by Sea Act 1924 of the United Kingdom and of the rules (hereinafter referred to as "the Hague Rules") set out in the schedule to the said Act.

Article III rule 6 paragraph 3 of the Hague Rules provides that

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered."

The parties agree that if paragraph 3 of article III rule 6 are applicable under the agreed facts and circumstances the action must be dismissed but if these provisions do not apply the plaintiffs are entitled to recover judgment against the defendants for the value of the goods the subject matter of all the bills of lading, the defendants are entitled to be indemnified against the said judgment by both the said third parties and the first third party is entitled to be indemnified by the second third party against any sums which the first third party may pay to the dependants in consequence of the said indemnity above referred to.

The question which arises for determination by the court is whether upon the true construction of paragraph 3 of article III rule 6 of the Hague Rules and in the events which have happened, the defendants are discharged from liability to the plaintiffs in respect of the said goods.

The learned trial judge answered this question in the negative. He took the view that by virtue of the clause paramount in the bills of lading which reads

"All the terms, provisions and conditions of the Carriage of Goods by Sea Act 1924, and the schedule thereto, are to apply to the contract contained in this bill of lading, and the company is to be entitled to the benefit of all privileges, rights and immunities contained in such Act and the schedule thereto, as if the same were herein specifically set out. If anything herein contained be inconsistent with the said provisions, it shall, to the extent of such inconsistency and no further, be null and void."

the Hague Rules must be regarded as having been contractually incorporated in the bills of lading, that paragraph 3 of article III rule 6 was an "exception clause", that the defendants had committed a fundamental breach of the contracts of carriage by delivering the goods to a person whom they knew to be not the holder of the bills of lading and that therefore they were disentitled from relying on this exception clause.

I have had the opportunity of reading the judgment of the Lord President and I agree with the conclusion he has arrived at that the Hague Rules, as a matter of construction, ceased to apply after the goods are discharged from the ship. However, having reached the same conclusion, on the agreed facts and circumstances of this case, because of the view I take of article II, it is desirable that I give my reasons.

In my opinion article III must be construed in the light of the provisions of article II which is in the following terms:—

"ARTICLE II.
RISKS.

"Subject to the provisions of article VI., under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth."

Article II is therefore the article that gives the carrier all his rights and immunities, including the right to be discharged from all liability (see *Pyrene Co. Ltd.* v. *Scindia Navigation Co. Ltd.*[10]). The "loss or damage" in paragraph 3 of article III rule 6 on which the appellants rely must therefore, in my opinion, be loss or damage "in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods." Devlin J. (as he then was) in considering whether the words "loss or damage" in section 4(1) and (2) of the United States Carriage of Goods by Sea Act 1936, which section is identical with article IV of the Hague Rules, relate only to physical loss or damage to goods, came to the conclusion that they do not. He said "I can see no reason why the general words 'loss or damage' should be limited to physical loss or damage. The only limitation which is, I think, to be put upon them is that which is derived from section 2 which is headed 'Risks.'. The 'loss or damage' must, in my opinion, arise in relation to the 'loading, handling, stowage, carriage, custody, care and discharge of such goods,' but is subject to no other limitation." (*Anglo-Saxon Petroleum Co. Ltd.* v. *Adamastos Shipping Co. Ltd.*[11] (at p. 253). His conclusion was later affirmed by the House of Lords and in particular by Lord Somervell who said "I agree with the learned judge that 'loss or damage' in the Act is not limited to physical damage to the goods. I also agree that the loss or damage 'must arise in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods'." (at p. 186).

The reasoning of Devlin J. is in my opinion applicable to the words "loss or damage" in article III rule 6 paragraph 3. In this paragraph these words are not qualified or limited by anything in article III as they are not in section 4 of the U.S.A. Act. In my view therefore the appellants must show that, on the admitted facts and circumstances, the "loss" arose "in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods". In my opinion they have not.

This was a simple and clear case where the "loss" arose in relation to the delivery of such goods. Can it be plausibly suggested that though the loss was due to the goods being delivered by the carrier to a party other than the shipper after

the goods had been discharged from the ship and had been placed in storage in a godown and the next duty of the carrier under the bill of lading was to deliver the goods to the shipper, it was nonetheless a loss which arose "in relation to the discharge of such goods" within the meaning of article II and therefore a "loss" within the meaning of article III rule 6 paragraph 3? I think not. The operation of discharge is different from the operation of delivery. If the intention and object of the Hague Rules were to also provide for the responsibilities and liabilities, rights and immunities of a carrier in relation to the delivery of goods under a contract of carriage of goods by sea to which the Hague Rules apply nothing would have been simpler than to insert the word "delivery" after "discharge" in article II.

I would accordingly dismiss this appeal with costs.

Wylie C.J. (Borneo): I have had the advantage of perusing the judgment delivered by the Lord President. I agree with the conclusion that it follows from the definition of "carriage of goods" in article I of the schedule to the Carriage of Goods by Sea Act, 1924, that, so far as the statute is concerned, the rules set out in the schedule will apply only until the goods are discharged from the ship. The statutory rules, including article III rule 6, had therefore ceased to have effect as such before the time when these goods were delivered to the Southern Trading Co.

It would be possible for the parties by express contract to extend the operation of the statutory rules to a longer period. This could be done by the terms of the particular bill of lading. The clause paramount in the bill of lading in this case expressly refers to the incorporation of the Hague Rules in terms which would incorporate the rules in cases where they would not apply by virtue of the Carriage of Goods by Sea Act, 1924, but which also include those cases where they do apply by virtue of the Act.

This clause also purports to define the period for which the rules are to apply to this particular contract. For, in effect, it provides that they shall have effect "in respect of so much of the carriage hereby covered as extends from the beginning to the end of the Hague Rules period". Later in the same clause, it is provided that

> "the expression 'the Hague Rules period' means the period extending from the beginning of whichever of the following operations in relation to the goods is agreed to be first performed by, or pursuant to arrangements made by, the carrier, namely loading, handling, stowing or carrying the goods on the vessel, until the completion of whichever of the following operations in relation to the goods is agreed to be last completed by, or pursuant to arrangements made by the carrier, namely, carrying the goods on or discharging the goods from the vessel."

In this case, the carrier, or their agents, did carry out the operation of discharging the goods, but it is clear that these provisions do not extend the application of the Hague Rules beyond the period to which they are restricted by reason of the statutory definition of "carriage of goods".

Two other clauses are relevant as showing that this is the intention. For they make provision for the liability of the carrier at other stages of the transaction. Clause 1 is headed "Period of responsibility" and it provides that the carrier "has no responsibility whatsoever for the goods prior to the loading on and subsequent to the discharge from the vessel". There is thus a complete picture — liability according to the statute or the Hague Rules, so long as they apply to this bill of lading according to their own tenor, and no responsibility at any other stage. Clause 6 in regard to reception of the goods also fits into this picture. It provides that the receiver must be ready to take delivery of the goods alongside the vessel "as fast as she is able to discharge" and, if delivery is not taken at that stage, the carrier may, *inter alia*, store the goods "and the contract of carriage shall be considered as having been fulfilled". Thus there is to be no further responsibility on the carrier at that stage because he has fulfilled the contract of carriage. Of course, the expression "contract of carriage" used in this clause of the bill of lading is not necessarily to be limited to the same operations as is the same expression used in the Hague Rules. However, this does not affect the overall picture I have already outlined.

It follows that this claim arises from a default in performance of an obligation under the contract to which the Hague Rules do not apply and to which their application has not been extended by the terms of the contract itself. For these reasons, I agree that the period of limitation provided for by the third paragraph of article III rule 6 of the Schedule has no application to this claim. Clauses 1 and 6 of the bill of lading would be relevant. However, in paragraph 13 of the case stated, there is an admission that the appellants are liable in respect of the respondent's claim, if article III rule 6 does not discharge the appellants from all liability. The question for the court to answer has been framed accordingly. No doubt this admission took into account that the appellants, although they did not at the time have possession of the goods the subject of the contract of carriage, had themselves committed the tort of conversion, *Hiort* v. *Bott*.[13] The decision of the Privy Council in *Sze Hai Tong Bank Ltd.* v. *Rambler Cycle Co. Ltd.*[1] may also have been considered relevant. Whatever considerations weighed with the parties, it follows from the admission and the question as framed in the case stated that neither the

court below nor this court is called upon to consider these matters, although the point of law referred to in paragraph 2(3) of the memorandum of appeal might appear to raise them.

In my judgment, the question for the opinion of the court should be answered in the negative for the reasons I have indicated. As the court below did answer the question in the negative, albeit for different reasons, I would dismiss the appeal with costs to the respondent.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; Rodyk & Davidson*; *Allen & Gledhill.*

RE EASTERN MINERALS & TRADING (1959) LTD.

[O.C.J. (Ambrose J.) August 25, 1964]

[Singapore — Companies Winding-up No. 1 of 1964]

Company law — Winding-up — Company incorporated in Federation of Malaya — Companies Ordinance (Cap. 174), s. 295 (1) and (2).

This was a judgment creditor's petition under section 295(2) of the Companies Ordinance for the winding-up of a company incorporated in the Federation of Malaya. The debt alleged in the petition was said to be the balance due on a bill of costs taxed pursuant to a judgment obtained against the debtor company.

Held: (1) section 295(2) of the Companies Ordinance is merely expository and does not give the court an additional enabling power to make a winding-up order;

(2) on the authority of *Re Langham Skating Co.*(3) and *Re Wear Engine Works Co.*(4) the petition should be dismissed as it did not allege a ground for winding-up within section 295(1)(b) of the Companies Ordinance.

Cases referred to:—

(1) *Russian & English Bank* v. *Baring Brothers* [1936] 1 All E.R. 505 at p. 516.

(2) *Banque de Moscou* v. *Kindersley* [1950] 2 All E.R. 545 at p. 560.

(3) *Re Langham Skating Rink Company* (1877) 5 Ch. D. 669.

(4) *Re Wear Engine Works Co.* (1875) 10 Ch. App. 188.

(5) *Re Crigglestone Coal Co. Ltd.* [1906] 2 Ch. 327 at p. 332.

COMPANIES WINDING-UP.

K. E. Hilborne for the petitioning creditor.

T. Q. Lim for the debtor company.

Goh Heng Leong for 3 creditors.

Po Guan Hock for a secured creditor.

Ambrose J.: This was a petition for the winding-up of Eastern Minerals & Trading (1959) Ltd., a company incorporated in the Federation of Malaya, by Tong Aik (Far East) Ltd. a judgment creditor. The debt alleged in the petition is a sum of $7,504.80, which is said to be the balance due on a bill of costs taxed pursuant to a judgment obtained against the debtor company.

The petition was presented under section 295(2) of the Companies Ordinance (Cap. 174), as appears from the heading of the amended petition. Section 295(2) provides as follows:

"Where a company incorporated outside the Colony which has been carrying on business in the Colony ceases to carry on business in the Colony, it may be wound up as an unregistered company under this Part of this Ordinance, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated."

This subsection corresponds to section 91 of the Companies Act, 1928, which was subsequently re-enacted as section 338(2) of the Companies Act, 1929. Section 338(2) of the Act of 1929 provides as follows:

"Where a company incorporated outside Great Britain which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up as an unregistered company under this Part of this Act, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.'

According to the observations of Lord Atkin in *Russian & English Bank* v. *Baring Brothers,*(1) section 338(2) was introduced into the Act of 1929 for the removing of doubts and to make it clear that the words "if the company is dissolved" in section 338(1)(d)(i) were meant to apply to an incorporated company dissolved according to the law of its constitution: and not intended to give a new enabling power only applicable to a company which should cease to carry on business after the passing of the Act. Section 338(1)(d) of the Act provides as follows:

"Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:

. . . . . .

(d) The circumstances in which an unregistered company may be wound up are as follows:—

(i) If the company is dissolved, or has ceased to carry on business, or is carrying on business or is carrying on business only for the purpose of winding up its affairs;

(ii) If the company is unable to pay its debts;

(iii) If the court is of opinion that it is just and equitable that the company should be wound up."

In *Banque de Moscou* v. *Kindersley,*(2) at page 560, Evershed M.R. observed as follows:

"It follows, in my judgment, that sub-section (2) of section 338 must be regarded as expository only, and as not having been intended to give jurisdiction to wind up dissolved foreign corporations subject to special limiting conditions not applicable to the more general jurisdiction conferred by sub-section (1);"